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Supreme Court of the United States

October Term, 1944.

No. 349

SPRINGFIELD SAND & TILE CO., *et al.*,
Defendants-Appellants,
Plaintiffs-Appellants,

v.

JAMES BAGNEL,
Plaintiff-Appellee,
Defendant-Appellee.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT AND BRIEF IN SUPPORT THEREOF.

THOMAS H. MAHONY,
Attorney for Petitioners.

Of Counsel:
JOHN I. ROBINSON,
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BOSTON, MASS.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

Your petitioners, Springfield Sand & Tile Company and Construction Service Corporation, respectfully submit the following petition for a writ of certiorari and pray that the same may issue to review the judgment of the United States Circuit Court of Appeals for the First District which was entered July 6, 1944, vacating two judgments and two de-

crees of the District Court of the United States for the District of Massachusetts.

Statement.

The two original law actions for personal injury based on negligence were brought by the plaintiff-appellee, James Bagnel, and the two resultant cross petitions for declaratory judgments were brought by the plaintiffs-appellants in the District Court of the United States for the District of Massachusetts. A specially pleaded defense, in the nature of a plea in bar—that the Workmen's Compensation Act of Massachusetts precluded recovery at law by the plaintiff—filed in each law action was severed and tried before Wyzanski, J., of the District Court with the petitions for declaratory judgments based upon the same propositions of law, and judgment was entered for the defendants-appellees in the law actions and final decrees were entered for the same parties as plaintiffs-appellants on the petitions for declaratory judgments (Record, pp. 7, 9).

The appellee, Bagnel, appealed to the United States Circuit Court of Appeals for the First Circuit, in a consolidated appeal which included the four cases and the Circuit Court of Appeals which (Record, pp. 7-11) on July 6, 1944, vacated said judgments and final decrees (Record, p. 21).

The original law actions, brought by Bagnel, are common law actions for personal injury, received while temporarily working in Massachusetts, and allegedly due to the negligence of an employee of a subcontractor of Bagnel's New York employer and were begun after acceptance by Bagnel of compensation under the Workmen's Compensation Act of New York, from the insurer of his employer, the general or

superior contractor, the insurer covering the said employer under the Workmen's Compensation Act of Massachusetts also. The severed special defense in each of said law actions and the petitions for declaratory judgments, asserting the non-existence of any such right of action at common law, under such circumstances are founded upon the Workmen's Compensation Act of Massachusetts—General Laws, Chapter 152, Sections 15 and 18, hereinafter referred to as "the Act."

The facts of the case, so far as they are applicable to the present petition, are set forth adequately in the opinion of the Circuit Court of Appeals, which opinion is printed in the record at pp. 25-45, and which is incorporated herein by reference.

Statute Under Consideration.

The statute upon which the special, severed defences in the law actions and the petitions for declaratory judgment are based is the Workmen's Compensation Act of Massachusetts, Chapter 152, Sections 15 and 18. These sections and other pertinent provisions of the Act will be found in the appendix on pages 16-21 and are incorporated herein by reference.

Jurisdiction.

The jurisdiction of this Court is invoked under section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, C. 229, Sec. 1; 43 Stat. 938; 28 U. S. C., sec. 347 (a). Judgments and final decrees were entered by the Circuit Court of Appeals for the First Circuit on July 6, 1944.

Questions Presented for Consideration.

The questions presented for the consideration of this Court are:

Was the Circuit Court of Appeals in error—

1. In holding that the Springfield Sand and Tile Company and the Construction Service Corporation had not established their special defenses—that the Workmen's Compensation Act of Massachusetts (Sects. 15, 18), precluded maintenance of Bagnel's common law action.
2. In holding that the Springfield Sand and Tile Company and the Construction Service Corporation had failed to sustain the burden of proving their right to relief by way of declaratory judgment based upon the same facts and propositions of law.
3. In holding that Bagnel was not disabled from maintaining his common law actions under the laws of New York against the Springfield Sand and Tile Company and the Construction Service Corporation by reason of the provisions of the Massachusetts Workmen's Compensation Act (Sects. 15, 18).
4. In holding that until and unless Bagnel's employer gave notice of insuring under the Massachusetts Workmen's Compensation Act (Sect. 24), Bagnel was not obliged to reserve his common right in writing and was not shown to have waived any such common law right.
5. In holding that until and unless a period of thirty days expired after Bagnel's employer had insured under the Massachusetts Workmen's Compensation Act and given notice thereof, Bagnel was not obliged to give his employer any written notice of his reservation of

his common law right and/or was not shown to have waived such right.

6. In ruling that said Section 24 was applicable to and decisive of the issues raised by the pleadings referred to.
7. In vacating the judgments and final decrees of the District Court for the District of Massachusetts.

Reasons Relied Upon for Allowance of Petition and Issuance of Writ of Certiorari.

1. The problems inherent in this case involve an important question of Conflict of Laws;
2. The judgment of the Circuit Court of Appeals is revolutionary in character in that the Circuit Court of Appeals has decided a question of Conflict of Laws contrary to the decisions of this Court as set forth in the recent cases of *Pacific Employers Insurance Co. vs. Industrial Accident Commission*, 306 U. S. 493, 502 and *Magnolia Petroleum Co. v. Hunt*, 64 U. S. S. C. Rept. 208, and contrary to the provisions of Article 4, section 1 of the Constitution of the United States and contrary to the adjudicated cases of the Supreme Judicial Court of Massachusetts, admittedly without any authority in either jurisdiction to warrant or support such judgment (Record, pp. 15-16).

Prayer for Writ.

It is therefore respectfully requested that this petition be granted and that a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit issue.

Respectfully submitted by

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Of Counsel:
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